

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ROBERTA MARTINEZ,

Plaintiff,

vs.

No. 1:14-CV-00761 WPL-KK

BOARD OF COUNTY COMMISSIONERS  
FOR RIO ARRIBA COUNTY,

Defendant.

**NOTICE OF COMPLETION OF BRIEFING ON DEFENDANT'S**  
**MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**ON COUNTS I AND II OF THE COMPLAINT**  
**ALLEGING BREACH OF CONTRACT AND**  
**WRONGFUL DISCHARGE**

Comes now Defendant, Rio Arriba County Board of County Commissioners, by and through its counsel of record, Yenson, Allen & Wosick, P.C. (Robert W. Becker, appearing), and notifies the Court that briefing is complete as follows on Defendant's Motion for Summary Judgment on Counts I and II of Plaintiff's Complaint alleging breach of contract and wrongful termination:

1. This case originated in the First Judicial District Court, Rio Arriba County.
2. The Complaint alleged no federal question claims.
3. On June 23, 2014, the Honorable Raymond Z. Ortiz, District Court Judge, granted Defendant Rio Arriba County's Motion for Partial Summary Judgment as to Counts III, IV and V of Plaintiff's Complaint, alleging violation of the New Mexico Human Rights Act, discrimination and intentional infliction of emotional distress. A copy of the order granting summary judgment is attached as Exhibit 1.

4. On July 7, 2014, Defendant Rio Arriba County filed a second summary judgment motion in the First Judicial District Court as to Counts I and II of Plaintiff's complaint alleging breach of contract and wrongful discharge. A copy of this motion is attached as Exhibit 2.

5. On July 24, 2014, the Plaintiff filed a response to the motion. In her response, Plaintiff raised the reasonable accommodation standards of the Americans with Disabilities Act, 42 U.S.C. § 12112 (b) (5) (a), as a reason why the County's motion should not be granted. A copy of this motion is attached as Exhibit 3.

6. On July 28, 2014, the County filed a reply in support of its motion. A copy of the reply is attached as Exhibit 4.

7. On August 20, 2014, defense counsel sent Plaintiff's counsel an email which stated the following: "[p]lease confirm or deny that you are pursuing a claim based on the Americans with Disabilities Act (ADA)." A copy of the email is attached as Exhibit 5.

8. Plaintiff's counsel never responded to this email. Consequently, pursuant to 28 U.S.C. § 1446 (b) (3), Huffman v. Saul Holdings Limited Partnership, 194 F.3d 1072 (10<sup>th</sup> Cir. 1999), Jackson v. Brooke, 626 F.Supp 1215 (D. Colo. 1986), Hubbard v. Union Oil Co. of California, 601 F.Supp. 790 (S.D. W.Va. 1985) and O'Bryan v. Chandler, 356 F. Supp. 714 (W. D. Okla. 1973) (which interpret 28 U.S.C. § 1446 (b) (3)), the County removed the suit to this Court on August 22, 2014. (Doc. 1). The same day, the County notified the First Judicial District Court and Plaintiff's counsel of the removal. (See attached Exhibit 6 minus the attached Notice of Removal filed in this Court).

9. On September 8, 2014 the County filed the state court record in this Court. (Doc. 4).

10. The briefing on the County's Motion for Partial Summary Judgment on Counts I and II of Plaintiff's Complaint alleging breach of contract and wrongful discharge is thus complete and ready for decision by this Court in light of the federal question raised in Plaintiff's response.

Respectfully submitted,

YENSON, ALLEN & WOSICK, P.C.

**/s/ Robert W. Becker**

Robert W. Becker

*Attorney for Defendant Rio Arriba*

*County Board of County Commissioners*

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**I HEREBY CERTIFY** that on the 15<sup>th</sup> day of September, 2014, I filed the foregoing electronically through the CM/ECF System, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing as well as mailed a copy first class mail to:

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**/s/ Robert W. Becker**